

**DEPOSITION TRANSCRIPT EXCERPTS OF JOHN CHRISTY**

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY

- - - - -  
NANCY CLINE, et al )  
Plaintiffs ) CASE NO.  
VS. ) 21-C-02-013505  
JOHN JAMES CHRISTY, et al )  
Defendants )  
- - - - -

The deposition of **JOHN CHRISTY** was taken on the 11th day of November, 2002, at approximately 10:00 a.m., at the State Farm Service Center, 118 East Oak Ridge Drive, Suite 200, Hagerstown, Maryland, before Sandra Beth Shrader, Notary Public.

1 Q. Is it your recollection that it was no  
2 overhead lighting in the area?

3 A. There might have been some lighting, I  
4 know it was very, very dark. I couldn't see  
5 behind me at all. I couldn't see anything. The  
6 only reason I could see the officer is because  
7 he had his lights flashing. I don't know if he  
8 had somebody pulled over on the other side of  
9 the road, I don't know.

10 Q. On westbound I-70, correct?

11 A. Right.

12 Q. There's a median in between eastbound  
13 and westbound?

14 A. I would assume so, yes.

15 Q. Do you recall whether or not there were  
16 two stretches of highway side by side?

17 A. I don't think they're side by side.

18 Q. Okay. Now, if you recall, at the point  
19 of impact which lane were you traveling?

20 A. I was in the right-hand lane.

21 Q. Okay. To your recollection do you

1 recall any modulation or adjustment in your  
2 speed, say for one hundred yards or so prior to  
3 the point of impact, do you recall braking for  
4 any reason or slowing down or changing lanes or  
5 anything like that?

6 A. No.

7 Q. Pretty much just going on a straight  
8 trajectory, to your recollection, with no  
9 adjustment in speed?

10 A. Correct.

11 Q. Okay. Your first notice of anything  
12 that happened was feeling an impact of some  
13 sort?

14 A. Yes.

15 Q. Did you ever notice either Mr. Cline's  
16 truck at or prior to the point of impact. Let  
17 me go back. Did you ever notice Mr. Cline's  
18 truck or the wood chipper behind it?

19 A. No.

20 Q. I take it you never noticed Mr. Cline?

21 A. No.

1       Q. You don't have any personal knowledge  
2 as to where Mr. Cline was relative to his  
3 vehicle or the wood chipper?

4       A. No personal knowledge. The only  
5 knowledge I have of that came from the officer  
6 and the reports I saw afterwards.

7       Q. Do you recall the name of this officer?

8       A. The last name of Townes comes to mind,  
9 but I'm not positive.

10      Q. He was with the Maryland State Police?

11      A. I believe so.

12      Q. About how long after the impact  
13 occurred did it take for Mr. Townes to arrive at  
14 the scene, if you recall?

15      A. I couldn't give you any of that time.  
16      I do know he was across the road and I guess  
17 whatever time it would take for him to notice  
18 the lights and get from that side of the  
19 highway, go down the exit, turn around and come  
20 back.

21      Q. So it's your recollection that Trooper

1           A. My first recollection of even what had  
2 transpired was after the officer had informed  
3 me.

4 Q. Informed you?

5 A. Of the accident, of what I had hit. My  
6 recollection to the officer was the same thing I  
7 just told you. I felt an impact, I didn't know  
8 what it was. I pulled over.

9 Q. You indicated it was raining. Was it  
10 raining then?

11 A. To my recollection, yes.

12 Q. Do you recall specifically having your  
13 wipers on?

14 A. I'm sure I did if it was raining.

15 Specifically, you know, I don't remember.

16 Q. I asked you this is it a possibility  
17 that it had rained and the road was wet or is...

18 A. It definitely had been raining and to  
19 my recollection it was still raining. It was  
20 not a heavy downpour at the time.

21 MR. BALLANTINE: Off the

1 Q. Is it a fair statement that you have?

2 A. That I've followed that roadway?

3 Q. Yes.

4 A. Yeah.

5 Q. In this particular location?

6 A. Yes.

7 Q. And, can you describe is this roadway  
8 say a hundred yards in either direction, is it  
9 flat, curvy, hilly, if you can describe the  
10 terrain for me or the topography of the road,  
11 for that matter?

12 A. It seems fairly straight to my  
13 recollection.

14 Q. Any hills, valleys?

15 A. I don't know. I honestly do not travel  
16 from Clear Spring down that way very often.

17 Q. But to your recollection this section  
18 of I-70 is fairly straight?

19 A. Yes.

20 Q. Do you recall, say within one-half  
21 minute or so, thirty seconds prior -- that

1 general time frame, prior to the impact you  
2 described being distracted by anything?

3 A. No, not at all.

4 Q. Do you recall being engaged in a  
5 conversation or any dealings with either of your  
6 children?

7 A. No.

8 Q. Okay.

9 A. I mean, if they were saying something I  
10 don't recall. But it would not have caused me a  
11 distraction.

12 Q. Do you recall looking in any direction  
13 other than straight in front of you down the  
14 road?

15 A. No.

16 Q. Now, in your answer to our original and  
17 first amended complaint you were served a couple  
18 of offenses, one of which is contributory  
19 negligence, are you familiar with the pleadings  
20 that have been drafted on your behalf by your  
21 counsel?

1 vehicle and the next day I drove it up there.

2 Q. Who's the board member that you  
3 conferred with on this?

4 A. Who was the board member?

5 Q. Yeah. I think a couple conferred, so I  
6 don't remember exactly which one I spoke with.

7 Q. So between the time you noticed it  
8 overheating and pulled it over and the time you  
9 took it to the Amoco you had a conversation  
10 with...

11 A. Yeah, by phone, yeah.

12 Q. And, the basis of your calling -- you  
13 called them?

14 A. Yes.

15 Q. What was the purpose for you calling  
16 them?

17 A. To let them know that the engine was  
18 overheating and if they had any input of what to  
19 be done.

20 Q. And, was it during that telephone  
21 conversation that this person...

1           A. They actually -- no, they called me  
2 back and said, "this is what we recommend."

3           Q. "We" being the board of the church?

4           A. I mean I don't know -- I don't think  
5 they had an official board meeting, it was just  
6 a phone call and they were members of the board  
7 that made the suggestion.

8           Q. They didn't make the suggestion right  
9 at the time you first called them?

10          A. No.

11          Q. They called you back?

12          A. Yes.

13          Q. The same person you spoke to called you  
14 back or somebody else?

15          A. The same person called me back.

16          Q. Don't remember who that was?

17          A. Dick, Dick Bowers.

18          Q. Bowers, B-O-W-E-R-S?

19          A. Yes.

20          Q. And, where does Mr. Bowers live?

21          A. He lives in...

**DEPOSITION TRANSCRIPT EXCERPTS OF BENJAMIN M. TOWNES, JR.**

0001

0016

1 A Just reviewers. I prepared the report  
2 myself.  
3 Q You indicated that you notified a  
4 reconstructionist, would that be Trooper Townes?  
5 A That would be me. I'm Trooper Townes.  
6 Q I'm sorry.  
7 A It was Trooper Fraley.  
8 Q And did he respond to the scene?  
9 A He responded to the scene.  
10 Q Did he prepare a report?  
11 A Without looking through this I don't think  
12 that he did. I think that he has so many hours, I  
13 think 24, he and the barrack commander have to sit  
14 down and determine whether or not there's going to be  
15 a reconstruction.  
16 Q Was a reconstruction made in this case?  
17 A No.  
18 Q Do you know why?  
19 A This is just my understanding of how it  
20 works in our agency. There was no unusual  
21 circumstance in terms of the fatality like alcohol or  
22 maybe like a diabetic or a suggestion of foul play or

0022

1 I really honestly don't recall. I just know that it  
2 wasn't there.

3 Q It wasn't there when you arrived?

4 A No. I think it was laying out here.

5 Q Does that photograph fairly and accurately  
6 show the position of the vehicles when you arrived  
7 other than the tire having been moved?

8 A Yes.

9 Q The white line that's shown in that, is  
10 that the dividing line from the right-hand eastbound  
11 lane and the right-hand shoulder or berm?

12 A I won't use the word dividing line, it's  
13 the edge line for the eastbound lane shoulder.

14 Q And showing you what's been marked as  
15 Exhibit 7, can you identify the vehicle shown in  
16 that?

17 A Same two vehicles and there's a fire truck  
18 in there.

19 Q And there appears to be on the far right  
20 side, is that a guardrail?

21 A That's a guardrail.

22 Q If you remember, was the pickup truck

0034

1 Q Just west?

2 A Yes.

3 Q Just before going onto the bridge?

4 A Yes.

5 Q If your report indicates that it was parked  
6 approximately ten feet west of the bridge would that  
7 be consistent with your recollection as you sit here  
8 today?

9 A As I sit here now that would be consistent,  
10 yes. I'm saying that it was either just on it or  
11 just west of it, you know, right close to it.

12 Q Given your understanding, the mental  
13 picture of this bridge as we sit here now, is there  
14 or is there not a shoulder area on the actual bridge  
15 portion?

16 A I don't think there is.

17 Q Does the bridge have concrete sides to it?

18 A Yes, and it has --

19 Q -- little metal rail on the top of that?

20 A Little metal tubular things.

21 Q Isn't it true that the parts of I-70 in  
22 this immediate vicinity where there exists a

0035

1 shoulder, it isn't concrete sides, there's just the  
2 metal guardrail type structures, right?

3 A At that location, yes.

4 Q Referring you to Exhibit 7 which you

5 identified as Mr. Cline's truck with the chipper in  
6 tow you see the mile marker number 26 to the upper  
7 right?

8 A Yes.

9 Q Would this photograph and would this  
10 location relative to the bridge be just west of it,  
11 not on the bridge itself?

12 A Yes. You can see the bridge marker right  
13 there so you know this is just west because there's  
14 the reflector.

15 Q You're referring to like right middle,  
16 upper foreground or background of the picture kind of  
17 diagonally black stripe over a yellow sign?

18 A Yes.

19 Q So ten foot prior to the bridge would be  
20 more or less accurate as to a resting spot of  
21 Mr. Cline's truck?

22 A Yes.

0036

1 Q That would be the front of Mr. Cline's  
2 truck?

3 A Yes.

4 Q And is it not true that the shoulder area  
5 that Mr. Cline would have been parked on tapers down  
6 to nothing as you enter actually go on the bridge,  
7 correct?

8 A Yes.

9 Q Do you remember telling me at the scene,  
10 and I understand if you don't, that based on your  
11 perception at the time that you didn't see how Mr.  
12 Cline could have gotten over any more to the right on  
13 the shoulder, he was over about as far as he could  
14 get?

15 A I think I remember saying that to you.

16 Q As you sit here today and recall the events  
17 of this accident and your investigation of it, is  
18 that still consistent with your recollection?

19 A Yes, it's a very narrow shoulder.

20 Q Is it -- give me an estimate of the width.

21 A Four feet.

22 Q And that's what you have reflected in your

0043

1 Q Do you have any basis today to dispute that  
2 approximate amount?

3 A No.

4 Q My question is simply just to clarify this  
5 55-foot reference on page 8. Would you or would you  
6 not agree that the 55 feet is not an adequate  
7 distance where the body would have been found from  
8 Mr. Cline's two vehicles? Believe me, I don't intend  
9 it as a trick question.

10 A Only way that would be possible is if he

11 was on the bridge.

12 Q Right, and your prior testimony was that --

13 A I don't think he was on the bridge.

14 Q He was east of the bridge?

15 A Yes, I believe.

16 Q So if the truck was ten feet west of the  
17 bridge he would have had to have been at least 290  
18 feet approximately from Mr. Cline's vehicle, correct?

19 A Mr. Cline's body?

20 Q Yes.

21 A Yes.

22 Q That's all I was getting to. In your

0044

1 report you also referenced a hazard light that was  
2 flashing that had been placed behind the wood  
3 chipper?

4 A Yes.

5 Q Do you, as you sit here today, recall that  
6 hazard light?

7 A Yes.

8 Q I'm going to show you what we marked as  
9 Exhibit 7, and to your recollection as you recall the  
10 events, do you see any indication or depiction of  
11 that hazard light?

12 A It's right here, to the rear of the  
13 chipper.

14 Q Right in the middle of the bottom of the  
15 photo?

16 A Yes, in the middle of the photo.

17 Q That would be depicted right behind the  
18 left wheel of the chipper?

19 A Yes.

20 Q Did you, at any time, have knowledge of or  
21 make a determination as to who owned that flashing  
22 light?

0045

1 A We believe that Mr. Cline owned it.

2 Q With regard -- as you sit here and recall  
3 without referencing your report yet, the condition of  
4 the road, weather, what's your recollection as to  
5 that?

6 A I think it was clear.

7 Q It was about 10:00 o'clock at night?

8 A It was just about ten.

9 Q How about lighting?

10 A There is lighting. I do recall having this  
11 conversation with you when you came down before.

12 It's poor.

13 Q You feel it's poor?

14 A Oh, yes.

15 Q You're unable to discern colors?

16 A I can't. I can't speak for anybody else

17 but I'm blind so --  
18 Q You're what?  
19 A I call myself blind. I have terrible  
20 eyesight. I mean, it's correctable but it's -- the  
21 lighting there is poor.  
22 Q As far as you're concerned at least?

0050

1 Q It looks like it's even bungy corded.  
2 A This could have been another tire. I just  
3 believe the flat tire was inside the vehicle. I  
4 don't know whether it was in this position or laying  
5 down.  
6 Q Anchor bolts, do you recall indicating or  
7 finding any damage to the hub area?  
8 A That bent leftward.  
9 Q That would be east?  
10 A Yes, they were bent eastward.  
11 Q Do you remember any of those anchor bolts  
12 being shot off?  
13 A I don't recall that. I just know that they  
14 were bent.  
15 Q So you recall anchor bolts being the bolts  
16 on the hub of the wheel to which you attach the  
17 wheel?  
18 A I call them another name in the report but  
19 yes.  
20 Q It's what you'd put the lug nuts on?  
21 A I think I call them lug bolts or something  
22 like that.

0051

1 Q So those were bent in an easterly  
2 direction?  
3 A Yes.  
4 Q And to your recollection this wheel that's  
5 depicted in Exhibit 8 propped up against the hitch  
6 was lying near the front driver's side wheel of the  
7 truck?  
8 A I said I think it was laying somewhere up  
9 in here. I just know that it wasn't there. It  
10 wasn't there meaning in the back of the truck.  
11 Q Was the tailgate down when you arrived?  
12 A Yes.  
13 Q Did you observe, I mean, we see in  
14 Exhibit 6 we see where the whole left taillight  
15 assembly of the Cline vehicle is basically  
16 demolished, do you see that?  
17 A Yes, I see it.  
18 Q Do you recall there being any damage to the  
19 tailgate?  
20 A I don't recall. I don't think that there  
21 was.

22

Q Did you ever flip up the tailgate?

0055

1 Q That's all I'm asking.

2 A Because I understand it but this is not the  
3 official --

4 Q Based on your own experience, put it that  
5 way.

6 A This collision -- and you know, I don't  
7 want to sound morbid or uncaring when I say this --  
8 this collision is normal. It resulted in a fatal but  
9 it's normal. We can tell within a short period of  
10 time generally what happened.

11 We also know because of the fact that this  
12 gentleman, Mr. Cline, was traveling from Michigan and  
13 Mr. Christy was headed to Hagerstown or Downsville or  
14 wherever. They don't know each other. We know that  
15 there was no road rage.

16 Mr. Cline's vehicle was on the shoulder,  
17 Mr. Christy is traveling along. So we don't have to  
18 trace -- there was no rollovers, flips, vehicle  
19 coming from the other direction that lost control  
20 where you have to go back and back.

21 You can tell what happened. There was no  
22 history between the two operators as far as personal

## **DEPOSITION TRANSCRIPT EXCERPTS OF JOHN ERIC HERKO**

0001

0011

1 Interstate 70?

2 A That's correct.

3 Q Tell me what you remember of this incident.

4 A As I was heading eastbound on Interstate 70

5 I noticed a vehicle on the side of the road.

6 Q Where was it?

7 A It was on the right-hand shoulder on the

8 road.

9 Q Can you give me a mile marker or some kind

10 of location point?

11 A It was right before the overpass for Route

12 81. And I noticed it was a Ford pickup truck and it

13 was jacked up in the air and looked like the wheel

14 was missing. At that time I had a Ford pickup truck

15 relatively the same year.

16 Q What year was yours?

17 A '95.

18 Q Were you driving that --

19 A Yes.

20 Q -- that evening?

21 A Yes.

22 Q All right.

0012

1 A And I had some spare lug nuts in the  
2 vehicle, in the glove box and I thought maybe that he  
3 had lost a wheel, lug nuts came off as I passed him,  
4 went to the very next exit, turned around, headed  
5 back westbound on 70.

6 Q When you went past him you said the car was  
7 jacked up or the truck was?

8 A Correct.

9 Q Are you sure?

10 A Yes.

11 Q And the wheel was off it?

12 A Yes.

13 Q Where was the operator if you remember?

14 A I didn't see him at that time.

15 Q Do you remember anything significant about  
16 the vehicle?

17 A On the back of the vehicle there was a, I  
18 guess a brush shredder. And I believe the four-way  
19 flashers on the truck itself were on.

20 Q Were on?

21 A Yes.

22 Q Do you recall any other kind of flasher

0014

1 A I don't know for certain, I would say  
2 approximately a mile-and-a-half.

3 Q You came back?

4 A Correct.

5 Q Now you're heading westbound on I-70?

6 A Correct.

7 Q What did you see at that time?

8 A When I passed the location where the truck  
9 was sitting I noticed somebody pushing the wheel  
10 along alongside the truck. It was in between the  
11 trailer and the truck.

12 Q You say the trailer and truck, you mean the  
13 brush shredder?

14 A Yes.

15 Q Where was he pushing it?

16 A Towards the axle.

17 Q Could you tell from either your trip  
18 eastbound or now going westbound where the truck was  
19 in relationship to the roadway?

20 A It was off the shoulder of the road. The  
21 chipper may have been close to the edge of the road  
22 but I know it was on the outside edge of the white

0015

1 line.

2 Q Where was the truck?

3 A In front of it.

4 Q Was the truck also on the white line?

5 A No.  
6 Q Are you sure?  
7 A Yes.  
8 Q Then what?  
9 A I headed westbound. I went back up and  
10 turned around the very next exit.  
11 Q Again, would that have been the one for  
12 Williamsport?  
13 A Yes, I turned around and came back down.  
14 Q As you're going westbound were the four-way  
15 flashers still on?  
16 A I didn't notice at that point.  
17 Q You don't know if they were or they  
18 weren't?  
19 A No.  
20 Q Now you've gone up, you turned around and  
21 you're coming eastbound again?  
22 A Yes.

0017

1 Q Did you see any other flashing devices?  
2 A Not that I recall. And I looked alongside  
3 of the truck and I didn't see anybody.  
4 Q Did you see any tires?  
5 A No. Didn't see a tire, didn't see nobody.  
6 What I thought had happened was the tire that he was  
7 wheeling was flat and he was trying to wheel it to  
8 the next exit. You know, I wasn't sure what happened  
9 at that point.  
10 And at that point in time I walked to the  
11 passenger side of the truck and started walking  
12 towards Route 81 looking eastbound on 81. I walked  
13 to the front of the pickup truck and I noticed it was  
14 running, the pickup truck. I heard the engine  
15 running and idling.  
16 Q And again, you don't remember whether there  
17 were flashers on?  
18 A No. I walked back to the truck and figured  
19 well, he's got to be somewhere close by, he wouldn't  
20 leave it running. Came around the driver's side of  
21 the vehicle which would be the left-hand side of the  
22 vehicle and I noticed the side of the truck had

0018

1 scrape marks going up it. Immediately I thought the  
2 worst. I proceeded back to the right-hand side of  
3 the vehicle.  
4 Q Let me stop you for a second. As you came  
5 up the left side of the truck, as you walked next to  
6 it, were you in the travel portion of I-70?  
7 A No.  
8 Q You were on the shoulder?  
9 A Yes.  
10 Q You sure?

11       A     Yes.  
12       Q     All right.  
13       A     As I walked onto the right side of the  
14 vehicle, walked further up the road, when I  
15 approached the gentleman the only thing I could see  
16 is a hand and a foot twisted in the guardrail. And  
17 that's when I ran back to my vehicle and dialed 911.  
18       Q     When you saw the body it was in front of  
19 the stopped truck?

0028

1       A     Yes, I was between the chipper and the  
2 truck.  
3       Q     When you walked up in the back behind the  
4 truck?  
5       A     Correct.  
6       Q     Did you indicate, and maybe I didn't hear  
7 you correctly, the chipper wheel was over the white  
8 line?  
9       A     It was to the inside of the white line.  
10      Nothing was over the white line, it was all to the  
11 inside of the white line.  
12      Q     How about the truck?  
13      A     Was to the inside. It wasn't on the  
14 left-hand side of the white line, it was on the  
15 right-hand side of the white line.  
16      Q     Looking at it eastbound?  
17      A     Correct.  
18      Q     You never walked along the side of the  
19 road?  
20      A     No.  
21      Q     So as you look at those photographs,  
22 Exhibits 7 and 8, the extent to which it might show a

**DEPOSITION TRANSCRIPT EXCERPTS OF ROBERT FRALEY**

0001

1                   IN THE CIRCUIT COURT  
2                   FOR WASHINGTON COUNTY, MARYLAND  
3                   -  
4     NANCY J. CLINE, Personal                   |  
5     Representative of THE ESTATE OF           |  
6     GLEN H. CLINE, JR., Deceased, and       |  
7     for the Use of Terry Tunney,              |  
8     Dorothy Miller, Brian Cline and        |  
9     Rick Cline, children of said            |  
10    Deceased                                    |  
11    And    |  
12    JOSH H. CLINE,                            |  
13                   Plaintiffs                    |  
14                   v.                                |  
15     JOHN JAMES CHRISTY                      |                   Case No.  
16     and    |                   21-C-02-013503  
17     AGAPE HARVESTER CHURCH, INC.,        |  
18     Defendants                                |  
19                   -  
20                   Deposition of **ROBERT FRALEY**  
21                   Hagerstown, Maryland  
22                   Friday, January 31, 2003

0011

1     A     Yes.  
2     Q     And it's the ordinary course of business of  
3     the state police to prepare those reports?  
4     A     Yes, sir.  
5     Q     And will referring to that report refresh  
6     your recollection?  
7     A     Yes, it will.  
8     Q     Do you have, before referring to it, any  
9     independent recollection of your investigation of  
10    that accident?  
11    A     Some, sir, yes.  
  
12    Q     Tell me what you remember without referring  
13    to the report.  
14    A     If I remember correctly, sir, it had rained  
15    a little bit that night or it was misting, the  
16    roadway was wet. The streetlights were on at that  
17    particular point of the intersection of eastbound  
18    Interstate 70 prior to Interstate 81. There was a  
19    Ford pickup pulling a brush eater on a trailer and it  
20    had pulled over to the right shoulder.  
21           And I remember the wheels of the vehicle  
22    because I looked at that extensively. I remember the

0017

1 evidence that could have been depleted such as since  
2 the roadway was wet chances are we had light to  
3 medium skid or squeegee marks at that point because  
4 of the roadway surface being wet. Sometimes you  
5 don't really have a full skid mark, a full black  
6 mark, sometimes you have a squeegee mark which is  
7 basically the tire squeegeeing the water off the  
8 roadway as it slides. I checked for those.

9 Q Did you find any?

10 A To the best of my recollection, sir, there  
11 wasn't any. You could see tracks because the first  
12 thing the corporal did was section off that lane so  
13 we had vehicular traffic pretty much under control  
14 and the evidence scene was preserved.

15 I went back from a distance to get a proper  
16 perspective on what the driver may have seen as far  
17 as upcoming -- as far as the truck being on the side  
18 and where he may have been looking or whatever.

19 Q Did you do that in a vehicle or on foot?

20 A I did it in a vehicle, sir, first and then  
21 I did it on foot with the assistance of lighting to  
22 see if I did have any squeegee marks to see if there

0018

1 was anything that would suffice as far as showing  
2 some type of driver reaction at that point, and found  
3 none.

4 Q Do you know whether any vehicles came by in  
5 that right-hand lane after the accident took place  
6 and before Corporal Townes arrived?

7 A No, sir, I don't.

8 Q Is there any way to tell?

9 A Not really, sir.

10 Q What else did you do as part of your  
11 investigation that evening?

12 A Basically did the, like I said, the initial  
13 scene size-up and I spoke with Corporal Townes as to  
14 the witnesses. I re-spoke with the witnesses that  
15 were available and the witness was Mr. Christy. And  
16 he gave a written statement as to what happened.

17 Q Was that statement given to you?

18 A No, sir, it was given to Corporal Townes.

19 Q Did you also speak with another witness, a  
20 Mr. Herko?

21 A Tell you the truth, sir, I don't recall. I  
22 may have. There's about -- by that time we also had

0020

1 believe that it wasn't taken that evening?

2 A No, sir, I don't. Like I say, my focus was  
3 on the scene itself and they could have been back  
4 further.

5 Q You just don't remember whether they were

6 there or not?  
7 A No, sir, I don't.  
8 Q Did you take any measurements at the scene?  
9 A No, sir, I didn't.  
10 Q Why not?  
11 A I marked, basically marked where the  
12 vehicles were.  
13 Q How did you mark that?  
14 A With spray paint, sir.  
15 Q On which side of the vehicles would the  
16 spray paint have been located?  
17 A The spray paint would have been located on  
18 the side where the tires were against the white line  
19 and also the other side of the tires.  
20 Q On both sides of both vehicles?  
21 A Yes. Well, not the second vehicle. I  
22 don't think I -- yes, I did too. I do remember

0032

1 Mr. Christy says he was distracted, is there?  
2 A Well, he said that I was looking for the  
3 new Downsville Pike exit to travel home. My son and  
4 daughter were with me in the car, they were talking  
5 to me when I suddenly hit something.  
6 When he explained this to me he said that  
7 they were -- he had looked back into the back seat,  
8 looked over his right shoulder as he was talking to  
9 his children.  
10 Q You remember him telling you that?  
11 A Yes, sir.  
12 Q Go ahead.  
13 A When he did that I asked him whether or not  
14 it would have been possible for him. And he even  
15 repeated the movements and when he repeated the  
16 moments, if you were holding onto a steering wheel  
17 talking with somebody looking straight ahead that's  
18 one thing but if you were to turn around and look,  
19 just by the movement of your body could have moved  
20 the steering wheel far enough where he would have  
21 gone off close enough to contact both the truck and  
22 the pedestrian.

0036

1 Q If you know, tell us, if you don't, tell  
2 us.  
3 A I have no idea, sir. He talked with me and  
4 Corporal Townes and he made the decision.  
5 Q Did you give him your version of how you  
6 believe the accident occurred?  
7 A Yes, sir.  
8 Q Based on your investigation at the scene,  
9 your speaking with the witnesses, Corporal Townes,  
10 your measurements, if any, can you give us an opinion  
11 within a reasonable degree of probability in the  
12 field of accident reconstruction as to how this  
13 accident occurred?

14                   MR. FREEL: Objection. Go ahead.  
15                   THE WITNESS: Yes. As I stated, the  
16 vehicle was close to the white line. Mr. Christy was  
17 coming down the road eastbound in lane two which  
18 would have been the second lane over closest to the  
19 right shoulder.  
20                   Mr. Christy was engaged in some type of  
21 conversation with his children, turned around  
22 slightly. When he turned around it pulled the wheel

0037

1 to the right enough where he went close to the white  
2 edge line where Mr. Christy was standing in the road.  
3 BY MR. BALLANTINE:

4                   Q     You mean Mr. Cline?  
5                   A     I'm sorry, Mr. Cline. Where he struck the  
6 rear of the vehicle, left rear of the truck that was  
7 parked there, and he also struck Mr. Cline and came  
8 to final rest on up the road several hundred feet to  
9 my recollection.

10                  Q     Who came to rest, Mr. Christy?  
11                  A     Yes.

12                  Q     Do you know where the body came to rest?  
13                  A     I think that was about 100 feet or so. It  
14 was about probably half the distance between the  
15 truck and Mr. Christy's final rest.

16                  Q     And it's your opinion within a reasonable  
17 degree of probability in the field of accident  
18 reconstruction is that when he was struck Mr. Cline  
19 was in the travel portion of the right-hand eastbound  
20 lane of I-70?

21                  MR. FREEL: Same objection.  
22                  THE WITNESS: Yes, sir.

0041

1                  Q     I've got a couple of questions.  
2                  A     Just to clarify also, Corporal Townes was  
3 probably on the scene 20 minutes to 30 minutes prior  
4 to my arrival so what the pictures show is pretty  
5 much what I viewed when I was there.

6                  Q     I think you indicated earlier that you took  
7 all the photographs relative to this investigation.

8                  A     Yes, sir.

9                  Q     Now, with the official investigation report  
10 that you brought with you today that was marked in  
11 duplicate as Exhibit 1 to Corporal Townes' deposition  
12 there are no photographs with the official MSP  
13 report; is that true?

14                  A     The one I have today, no, sir, they could  
15 not be located.

16                  Q     And is that ordinary, in the ordinary  
17 course of business of keeping at least your barracks  
18 records?

19                  A     Occasionally they get misfiled. I can't

20 say it happens in every case but unfortunately it  
21 happened here.

22 Q Would you say it's ordinary or not

0043

1 lieutenant's signature because he reviews the report,  
2 he reviews my report and he makes the final  
3 determination whether or not a reconstruction at that  
4 point would be done.

5 Q Basically this attachment G is your  
6 notification that there is not going to be, as far as  
7 you're concerned, a reconstruction report?

8 A Yes.

9 Q And your reasons why and you're asking the  
10 lieutenant to tell you whether he agrees with you or  
11 not?

12 A Yes, sir.

13 Q You said that you arrived on the scene  
14 about 20 or 30 minutes after Corporal Townes would  
15 have?

16 A Yes, sir.

17 Q And you say you do not recall seeing the  
18 Cline vehicle hazard lights flashing?

19 A No, sir, I don't really recall that no.

20 Q And the vehicle was turned off when you  
21 arrived?

22 A To the best of my recollection it was, sir.

0044

1 Q Now, isn't it true that the rear taillight,  
2 left taillight assembly of the Cline truck was  
3 dismantled by this accident?

4 A Yes, sir.

5 Q So there's no way that could have been  
6 flashing; is that fair?

7 A Well, it could have been if the bulb hadn't  
8 been crushed.

9 Q Can you refer to Exhibit 8 I think?

10 A Yes, it is. It looks like the whole  
11 taillight assembly was crushed pretty much.

12 Q Including the bulb?

13 A Including the bulb.

14 Q Do you recall there being any damage to the  
15 tailgate itself?

16 A No, sir.

17 Q Did you flip the tailgate up, down, did you  
18 do any investigating with regard to that?

19 A No, sir, not as far as lifting the tailgate  
20 up or down.

21 Q Did you crawl into the back area of the  
22 pickup truck, the cabin portion?

0045

1       A     I leaned in far enough, sir, to check the  
2 tire up in there, it seemed to be inflated.

3       Q     The picture, again referring to Exhibit  
4 Number 8, does that or does that not reflect a  
5 substantial quantity of items in the back or items in  
6 the back?

7       A     Yes, sir, it does.

8       Q     Did you at any time inventory what those  
9 items were?

10      A     No, sir, I did not.

11      Q     Did you note, as you sit here today, do you  
12 remember noting tools, tool boxes, cases, things like  
13 that when you looked in there?

14      A     Yes, sir.

15      Q     Correct me if I'm wrong, I believe that you  
16 indicated that a reconstruction investigation is  
17 performed only if the investigating officer has  
18 questions as to how something happened.

19      A     Correct.

20      Q     Is that correct?

21      A     Uh-huh.

22      Q     Is that a fair generalization when it is

0056

1       wheel hub and others which were sheared off would  
2 that be of any significance to you in reconstructive  
3 efforts?

4       A     At this particular point probably not, sir.  
5 Not the way as far as if you refer to Townes Exhibit  
6 Number 8 again, if you look at the position of the  
7 jack the jack would have been disturbed prior to the  
8 vehicle contacting those lug bolts as opposed to  
9 maybe the vehicle having mechanical problems and  
10 having to pull over, that would probably cause  
11 Mr. Cline to have to pull over if his lug bolts were  
12 sheared off and he would have lost a tire at that  
13 point.

14      Q     Or could it be that the wheel was partially  
15 taken off, some bolts still tightened down, some nuts  
16 tightened down, others taken off and the impact  
17 caused the bending and the shearing phenomenon?

18      A     It could have been but like I say, it would  
19 depend totally on where the tire would have been. If  
20 the tire would have been on and there was this much  
21 damage here then the tire would have been disturbed  
22 up along the side of the vehicle somewhere. Not

0057

1       unless this is not the actual final rest of the tire.

2       Q     Let's say it wasn't. Let's just say the  
3 tire was still on the wheel hub itself.

4       A     Okay.

5       Q     And let's say that some lug nuts were  
6 tightened down and some had been taken off.

7 A Okay, then it's possible.

8 Q Would that be consistent if the bent lug  
9 anchors were all bent in the same direction?

10 A Yes, sir.

11 Q Just a couple of more questions regarding  
12 your education. You say you were classified as an  
13 advanced -- you took your advanced investigation  
14 course in 1995?

15 A Yes, sir.

16 Q What did that entail in terms of coursework  
17 and time?

18 A Basically as far as looking at the  
19 taillight, for instance, looking at the scenes. It  
20 mentions body kinematics and interior restraining  
21 devices but doesn't really get into them and it  
22 doesn't have quite the formulas as far as your

**DEPOSITION TRANSCRIPT EXCERPTS OF THOMAS JOSEPH BOWERS**

0001

0042

1 A No.  
2 Q Do you know how tall Mr. Cline was?  
3 A It's in the autopsy report but I don't  
4 recall what it was.  
5 Q Would that have any impact on your  
6 opinions, his height?  
7 A Only if he was extremely tall or extremely  
8 small.  
9 Q If he was extremely tall it would have been  
10 easier to see him?  
11 A Correct.  
12 Q If he was extremely small it would have  
13 been more difficult to see him?  
14 A Correct.  
15 MR. BALLANTINE: Off the record.  
16 (Off the record discussion.)  
17 MR. BALLANTINE: That's all I have.  
18 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS  
19 BY MR. FREEL:  
20 Q Is it not true that there's in fact quite a  
21 bit left to speculation in this case in terms of  
22 cause and effect?

0043

1 A Yes.  
2 Q What I mean by that is in terms of evidence  
3 taken at the scene or the lack of evidence taken at  
4 the scene?  
5 A Lack of evidence taken at the scene.  
6 Q Is your understanding consistent with the  
7 assertion there was no reconstructive investigation  
8 conducted to speak of?  
9 A I wouldn't classify it as a reconstruction,  
10 not even a technical accident investigation.  
11 Q Okay. Is it not possible that there were,  
12 in fact, pieces of, specks of blood or pieces of  
13 flesh behind the left rear wheel well?  
14 A That's correct, it could have been.  
15 Q What you have are photographs, correct?  
16 A That's correct.  
17 Q And the photographs may or may not depict  
18 what in fact was present at the scene?  
19 A That's correct.  
20 Q Isn't it also true, and since we're talking  
21 speculation, that even if Mr. Cline were just within  
22 the shoulder there's a possibility he could have been

0044

1 struck and killed by the Christy vehicle?  
2 A Yes.  
3 Q And when you indicated that it was possible  
4 that Mr. Cline's vehicle could have been pulled over

5 further into the shoulder do you recall testifying to  
6 that?

7 A Yes.

8 Q Do I understand correctly you're talking  
9 literally it was possible?

10 A It was possible.

11 Q As in there are many things that are  
12 possible?

13 A Yes.

14 Q Did you answer take into consideration what  
15 Mr. Christy was experiencing at the time relative to  
16 the blowout of his rear left tire --

17 A No.

18 Q -- and the configuration of the shoulder as  
19 it went in to the bridge and all the things that  
20 might be going through a driver's head as he's  
21 dealing with steering a disabled vehicle off the side  
22 of the road?

0047

1 MR. BALLANTINE: Are we talking about the  
2 flashing light?

3 MR. FREEL: Yes, the hazard light.

4 THE WITNESS: Assuming that it was it would  
5 make a difference.

6 BY MR. FREEL:

7 Q One other thing. That you felt Mr. Christy  
8 was in the lane of travel and that he failed to  
9 observe -- Mr. Cline was in the lane of travel and  
10 that he failed to observe Mr. Christy.

11 A Uh-huh.

12 Q That latter part. Isn't it true that  
13 that's kind of speculative? How do we know whether  
14 or not Mr. Cline observed Mr. Christy?

15 A That is speculative because --

16 Q Isn't it possible he could have seen him  
17 and known that he was going to die based on what

18 evidence we have?

19 A It's quite possible that he could have seen  
20 him and said okay, it's time for me to die but that's